

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT)	
APPLICATION OF QWEST CORPORATION)	CASE NO. QWE-T-04-31
AND MATRAEX, INC. FOR APPROVAL OF)	
THE ADOPTION OF THE ORBITCOM)	
INTERCONNECTION AGREEMENT FOR)	
THE STATE OF IDAHO PURSUANT TO 47)	
<u>U.S.C. §252(e)</u>)	
IN THE MATTER OF THE JOINT)	CASE NO. QWE-T-04-31
APPLICATION OF QWEST CORPORATION)	
AND MATRAEX, INC. FOR APPROVAL OF)	
THE AMENDMENT TO THE ADOPTED)	ORDER NO. 29658
INTERCONNECTION AGREEMENT)	
<u>PURSUANT TO 47 U.S.C. §252(e)</u>)	

In this case the parties jointly submitted two Applications: one for approval of the adoption of an interconnection agreement; and one for the amendment of that adopted interconnection agreement. The Commission is asked to approve the adoption of, and amendment to, the interconnection agreement pursuant to 47 U.S.C. § 252(e).

BACKGROUND

Under the provisions of the federal Telecommunications Act of 1996, interconnection agreements must be submitted to the Commission for approval. 47 U.S.C. § 252(e)(1). The Commission may reject an agreement adopted by negotiations only if it finds that the agreement: (1) discriminates against a telecommunications carrier not a party to the agreement; or (2) implementation of the agreement is not consistent with the public interest, convenience and necessity. 47 U.S.C. § 252(e)(2)(A). As the Commission noted in Order No. 28427, companies voluntarily entering into interconnection agreements “may negotiate terms, prices and conditions that do not comply with either the FCC rules or with the provision of Section 251(b) or (c).” Order No. 28427 at 11 (emphasis in original). This comports with the FCC’s statement that “a state commission shall have authority to approve an interconnection agreement adopted by negotiation even if the terms of the agreement do not comply with the requirements of [Part 51].” 47 C.F.R. § 51.3.

THE CURRENT APPLICATION

On November 9, 2004, Qwest and Matraex jointly filed both an Application for approval of the adoption of the OrbitCom interconnection agreement (previously approved by the Commission in Case No. QWE-T-04-13, Order No. 29544), and an Application for approval of the amendment of that agreement. In the adoption of the agreement the parties agreed to simply replace "OrbitCom, Inc." throughout the agreement with "Matraex, Inc." In the amendment of the agreement the parties agreed to adopt terms and condition regarding the FCC's Triennial Review Order (TRO) and the D.C. Circuit Court's decision known as *USTA II*. Both Applications were jointly filed as negotiated interconnection agreements seeking the Commission's review and approval pursuant to 47 U.S.C. § 252(e).

STAFF RECOMMENDATION

The Staff has reviewed the Application for adoption, as well as the Application for amendment, and did not find any terms or conditions to be discriminatory or contrary to the public interest. Staff believes that both the Application for adoption and the Application for amendment are consistent with the pro-competitive policies of this Commission, the Idaho Legislature, and the Federal Telecommunications Act of 1996. Accordingly, Staff believes that both agreements merit the Commission's approval.

COMMISSION DECISION

Under the terms of the Telecommunications Act, interconnection agreements must be submitted to the Commission for approval. 47 U.S.C. § 252(e)(1). The Commission's review is limited, however. The Commission may reject an agreement adopted by negotiation only if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement or implementation of the agreement is not consistent with the public interest, convenience and necessity. *Id.* Additionally, companies voluntarily entering into interconnection agreements "may negotiate terms, prices and conditions that do not comply with either the FCC rules or with the provision of Section 251(b) or (c)." Order No. 28427 at 11 (emphasis in original); 47 C.F.R. § 51.3.

Based upon our review of the Applications and the Staff's recommendation, the Commission finds that the agreements are consistent with the public interest, convenience and necessity and do not discriminate. Therefore, the Commission finds that the agreements should be approved. However, approval of these agreements does not negate the responsibility of either

of the parties to these agreements to obtain a Certificate of Public Convenience and Necessity if they are offering local exchange services or to comply with *Idaho Code* §§ 62-604 and 62-606 if they are providing other non-basic local telecommunications services as defined by *Idaho Code* § 62-603.

ORDER

IT IS HEREBY ORDERED that the adoption of the OrbitCom, Inc. interconnection agreement by Qwest Corporation and Matraex, Inc., Case No. QWE-T-04-31, is approved.

IT IS FURTHER ORDERED that the amendment of the interconnection agreement between Qwest Corporation and Matraex, Inc., Case No. QWE-T-04-31, is approved.

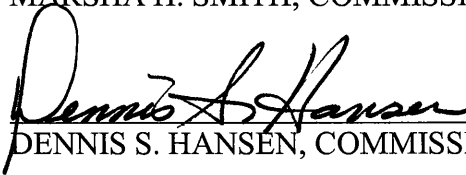
THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* §§ 61-626 and 62-619.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 8th day of December 2004.



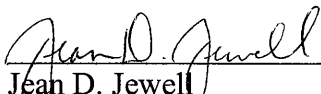
PAUL KJELLANDER, PRESIDENT

Commissioner Smith Out of the Office
MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

O:QWET0431_dw